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SENATE BILL 76

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO WORKERS' COMPENSATION; PROVIDING FOR LUMP-SUM SETTLEMENT AGREEMENTS FOR PAYMENTS OF COMPENSATION, MEDICAL BENEFITS OR BOTH; REQUIRING APPROVAL OF SETTLEMENTS BY WORKERS' COMPENSATION JUDGE; PROVIDING FOR A LIMIT ON ATTORNEY FEES IN SETTLEMENTS FOR FUTURE PAYMENTS OF COMPENSATION OR MEDICAL BENEFITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-5-12 NMSA 1978 (being Laws 1986, Chapter 22, Section 38, as amended) is amended to read:

"52-5-12. PAYMENT--PERIODIC OR LUMP SUM--SETTLEMENT.--

A. It is stated policy for the administration of the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law that it is in the best interest of the injured worker or disabled employee that ~~[he]~~ the worker or

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1 employee receive benefit payments on a periodic basis. Except
2 as provided in [~~Subsections B, C and D of~~] this section, lump-
3 sum payments in exchange for the release of the employer from
4 liability for future payments of compensation or medical
5 benefits shall not be allowed.

6 B. With the approval of the workers' compensation
7 judge, a worker may elect to receive compensation benefits to
8 which [~~he~~] the worker is entitled in a lump sum if [~~he~~] the
9 worker has returned to work for at least six months, earning at
10 least eighty percent of the average weekly wage [~~he~~] the worker
11 earned at the time of injury or disablement. If a worker
12 receives [~~his~~] the benefit income in a lump sum, [~~he~~] the
13 worker is not entitled to any additional benefit income for the
14 compensable injury or disablement and [~~he~~] the worker shall
15 only receive that portion of the benefit income that is
16 attributable to the impairment rating as determined in Section
17 52-1-24 NMSA 1978. In making lump-sum payments, the payment
18 due the worker shall not be discounted at a rate greater than a
19 sum equal to the present value of all future payments of
20 compensation computed at a five-percent discount compounded
21 annually.

22 C. After maximum medical improvement and with the
23 approval of the workers' compensation judge, a worker may elect
24 to receive a partial lump-sum payment of workers' compensation
25 benefits for the sole purpose of paying debts that may have

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1 accumulated during the course of the injured or disabled
2 worker's disability.

3 D. The worker and employer may elect to resolve a
4 claim for injury with a lump-sum payment to the worker for
5 past, present and future payments of compensation, medical
6 benefits or both in exchange for a full and final release of
7 the employer from liability for such payments. The proposed
8 lump-sum payment agreement shall be presented to the workers'
9 compensation judge for approval, and a hearing shall be held on
10 the record. The workers' compensation judge shall approve the
11 lump-sum payment agreement if the judge finds that:

12 (1) a written agreement describing the nature
13 of the proposed settlement has been mutually agreed upon and
14 executed by the worker and the employer;

15 (2) the worker has been fully informed and
16 understands the terms, conditions and consequences of the
17 proposed settlement; and

18 (3) the lump-sum payment agreement complies
19 with the requirements for approval set forth in Sections
20 52-5-13 and 52-5-14 NMSA 1978.

21 E. The workers' compensation judge shall approve a
22 lump-sum payment agreement pursuant to Subsection D of this
23 section by order. Once the agreement has been approved and
24 filed with the clerk of the administration, any further
25 challenge to the settlement is barred and the matter shall

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1 notbe reopened, set aside or reconsidered nor shall any
2 additional benefits be imposed.

3 F. If a worker elects to receive a lump-sum payment
4 in exchange for releasing the employer from liability for
5 future payments of compensation or medical benefits, the limit
6 on attorney fees pursuant to Subsection I of Section 52-1-54
7 NMSA 1978 shall apply.

8 [~~D.~~] G. If an insurer pays a lump-sum payment to an
9 injured or disabled worker without the approval of a workers'
10 compensation judge and if at a later date benefits are due for
11 the injured or disabled worker's claim, the insurer alone shall
12 be liable for that claim and shall not in any manner, including
13 rate determinations and the employer's experience modifier,
14 pass on the cost of the benefits due to the employer.

15 [~~E.~~] H. If the compensation benefit to which a
16 worker is entitled is less than fifty dollars (\$50.00) per
17 week, any party may petition the workers' compensation judge to
18 consolidate that payment into quarterly installments.

19 [~~F. Periodic compensation payments under the~~
20 ~~Workers' Compensation Act or the New Mexico Occupational~~
21 ~~Disease Disablement Law for disability arising from primary~~
22 ~~mental impairments or secondary mental impairments shall be~~
23 ~~paid as incurred and shall not be included in any lump-sum~~
24 ~~payments.]"~~

25 Section 2. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2009.

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